

COMMISSIONER'S DIRECTIVE #35

JANUARY 2007

DISCLAIMER: Commissioner's Directives are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Taxation of Indiana Residents with Pass Through Income from Another State

REFERENCE: IC 6-3-3-3; 45 IAC 3.1-1-74

INTRODUCTION:

The Department has analyzed the impact of Kentucky's income tax statutes for 2006 on Indiana resident taxpayers. Kentucky statute provides that the definition of a corporation includes all limited liability entities, including limited liability companies, limited liability partnerships, limited partnerships and S corporations. Limited liability entities are subject to Kentucky income tax at the entity level. Members, partners and shareholders of a limited liability entity, including Indiana residents, remain subject to Kentucky individual income tax on their distributive share of income of the limited liability entity, and receive a credit against their Kentucky individual income tax liability for their proportionate share of taxes paid at the entity level.

PROCEDURES:

IC 6-3-3-3 provides that whenever a resident person has become liable for tax in another state upon all or any part of his income for a taxable year derived from sources outside Indiana and subject to Indiana adjusted gross income tax, the amount of tax paid on the same income to the other state shall be credited against the amount of Indiana tax owed.

For the 2006 tax year the credit provided under IC 6-3-3-3 for Indiana residents may include the resident's proportionate share of taxes paid by a limited liability entity to the Commonwealth of Kentucky. The credit is available because the Indiana resident has personal liability for tax in Kentucky on their proportionate share of the income of the limited liability entity derived from Kentucky sources.

Pursuant to 45 IAC 3.1-1-74, the amount of the Indiana resident's credit for taxes paid to the Commonwealth of Kentucky for taxable year 2006 is the lesser of resident's Indiana income tax liability on the income derived from Kentucky sources or the amount of nonrefundable Kentucky tax credit claimed on the taxpayer's Kentucky individual income tax return.

The interpretation of IC 6-3-3-3 for the 2006 taxable year is to avoid double taxation by Indiana of the same income due and payable to the Commonwealth of Kentucky. The Indiana resident taxpayer must provide satisfactory evidence to the Department that Kentucky tax has been paid.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J".

John Eckart
Commissioner